

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MARINO DESILVA,

Petitioner,

vs.

BRIAN WILLIAMS, SR., et al.,

Respondents.

Case No. 2:14-cv-01041-JCM-CWH

ORDER

Petitioner, who is a prisoner in the custody of the Nevada Department of Corrections, has submitted an application to proceed in forma pauperis (#1) and a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (#1). The court dismisses this action because plaintiff did not include with his application (#1) a copy of his inmate account statement and a signed financial certificate, as required by 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2. Based upon review of the file, it does not appear that a dismissal without prejudice would affect materially the timeliness of a promptly filed new action.¹

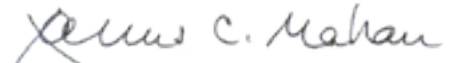
¹Petitioner alleges that his judgment of conviction was entered on September 12, 2012, and that he did not appeal the judgment. The federal one-year period of limitation started when his judgment of conviction became final. 28 U.S.C. § 2244(d)(1)(A). The judgment became final when the thirty-day period to appeal expired, on October 12, 2012. See Nev. R. App. P. 4. Petitioner filed a state habeas corpus petition on November 27, 2012, forty-six days later, and that petition tolled the federal one-year period while it was pending. 28 U.S.C. § 2244(d)(2). The state district court denied the petition, the Nevada Supreme Court affirmed, and the Nevada Supreme Court denied en banc reconsideration on May 23, 2014. The remittitur would have issued on or around June 17, 2014, and the federal one-year period would have resumed. Petitioner mailed his federal petition to this court on June 20, 2014, three days later. By the court's preliminary calculations, only forty-nine non-tolled days have passed.

1 IT IS THEREFORE ORDERED that the clerk of the court shall send petitioner a blank form
2 for an application to proceed in forma pauperis for incarcerated litigants and a blank § 2254 habeas
3 corpus petition form with instructions.

4 IT IS FURTHER ORDERED that the application to proceed in forma pauperis (#1) is
5 **DENIED** without prejudice.

6 IT IS FURTHER ORDERED that this action is **DISMISSED** without prejudice to
7 petitioner's commencement of a new action in which he either pays the filing fee in full or submits a
8 complete application to proceed in forma pauperis, accompanied by a signed financial certificate
9 and a statement of his inmate account. The clerk of the court shall enter judgment accordingly.

10 DATED: July 7, 2014.

11
12 
13 JAMES C. MAHAN
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28